

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Biomass Crop Assistance Program 1-BCAP	Amendment 3
---	--------------------

Approved by: Acting Deputy Administrator, Farm Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraph 4 B has been amended to remove the reference to 1-INFO.

Subparagraph 250 B has been amended to provide project shapefile details.

Subparagraph 252 A has been amended to provide that all required documents for project proposals must be submitted to the State Office.

Subparagraph 272 C has been amended to update the examples expiration date.

Subparagraph 398 F has been amended to provide that annual crops may allow for no penalty terminations after 2 growing seasons.

Subparagraph 404 B has been amended to provide that participants must refund payments made to the contract and pay liquidated damages.

Page Control Chart		
TC	Text	Exhibit
	1-3, 1-4 4-3, 4-4 4-4.5, 4-4.6 (add) 4-9, 4-10 4-45, 4-46 4-311, 4-312 4-321, 4-322	

3 Related Handbooks, Manuals, and Forms

A Related Handbooks and Manuals

Related handbooks include the following.

Handbook or Manual	Purpose
1-APP	Appeals.
1-AS	Supplementing BCAP matching payments provisions.
3-AS	Clearing forms.
25-AS	Records management.
1-CM	Common management provisions.
2-CM	Common farm and program provisions.
3-CM	Farm, tract, and crop data.
1-COR	Quality control.
--2-CP	Acreage and compliance determinations.--
4-CP	Payment reductions and violations.
6-CP	HELC and WC provisions.
7-CP	Finality rule and misaction/misinformation.
3-FI	Handling receipts and deposits.
50-FI	Prompt payment interest rates.
58-FI	Handling claims.
61-FI	Prompt payment provisions.
62-FI	Nonresident alien income tax.
63-FI	Assignments and joint payments.
2-INFO	Providing information to the public.
3-INFO	Privacy Act.
4-PL	Direct attribution for the 2-year matching payment duration.
22-PM	County Office personnel management procedures about conflict of interest with official duties.
NRCS National Food Security Act Manual	HEL and wetland determinations and delineations.

3 Related Handbooks, Manuals, and Forms (Continued)

B State Supplements to These Provisions

State Office handbook supplement instructions shall not be less or more restrictive than the provisions of this handbook. However, State-specific amendments may be made that are consistent with BCAP provisions. For permanent directives, the following guidelines must be followed:

- issue a permanent State Office directive only as a supplement to this handbook

Note: Do **not** create a separate State handbook.

- do **not** rewrite or elaborate on unclear or incomplete national instructions
- do **not** modify national wording when adding supplemental information
- State Offices may supplement these handbook instructions according to 1-AS.

Notes: Periodically, the National Office may select State Office amendments for review.

If any State Office directive appears to be in conflict with either BCAP regulations or National Office directives, the regulations and National Office directives, as applicable, apply and shall be used.

4 Access to Farms, Farm Records, and QBCF Records

A Access by USDA Representatives

Authorized USDA representatives, by written agreement, have access to the following:

- farms and farm records to:
 - make eligibility determinations
 - verify practice performance measures
 - determine program benefit amounts
- QBCF records, as provided in the BCF Agreement, to ensure that BCF's, EMO's, and BCAP participants are in compliance with program regulations and this handbook.

B Disclosure of Information

See * * * 2-INFO and 3-INFO about public information. Information subject to the Privacy Act and related laws must **not** be disclosed for either QBCF's or EMO's.

249 Federal Incentives (Continued)

A Assistance Available for Contract Acreage in Project Areas (Continued)

- annual rental payments for up to either:
 - 5 years for annual and perennial crops
 - 15 years for woody biomass

Note: Annual payments include a payment based on all or a percentage of:

- a weighted average soil rental rate for cropland
 - the applicable marginal pastureland rental rate for all other land except for NIPF
 - for forest land, the average county rental rate for cropland as adjusted for forest land productivity for NIPF
 - any incentive payment as determined by CCC, as applicable.
- establishment assistance of up to 75 percent of the eligible establishment costs for perennial crops on acres enrolled in BCAP

Note: If the crop fails and the producer is not at fault, assistance to re-establish eligible crops may be available.

Example: Jane Producer establishes switchgrass, which later failed because of a drought. Generally, cost-share assistance will be available to re-establish the crop.

- matching payments for qualifying eligible material delivered to QBCF.

Notes: The matching payments are limited by statute to no more than 2 years.

The annual payment will be reduced when a matching payment has been earned.

250 Project Proposal Submission

A Required Proposal Elements

A project sponsor must submit a complete proposal to the State Office which includes **all** of the following:

- a project proposal (Exhibit 20)
- completed BCAP-1
- completed BCAP-20
- completed BCAP-21
- completed BCAP-22
- letter of commitment from BCF stating the facility will use, for BCAP purposes, eligible crops intended to be produced in the proposed project area.

B Required Proposal Attachments

*--Proposals must contain **all** of the following attachments.--*

- Other information that provides CCC a reasonable assurance that BCF will be in operation by the time the eligible crops are ready for harvest.
- A shapefile with specific geographic boundaries physically located within the U.S., described in definite terms; such as watershed boundaries, mapped longitude and latitude coordinates, major highway, region, or counties.
- *--The project sponsor shall provide a GIS shapefile for the proposed project area that defines each project area boundary as a polygon or set of polygons. A GIS shapefile contains the following component files:
 - dbf
 - prj
 - sbn
 - sbx
 - shp
 - shp.xml
 - shx.

The shapefile shall be named “bcap_<code>_a_<prj >.shp”. The “code” is an abbreviation for the full BCAP project area name, and “prj” is the type of projection.--*

250 Project Proposal Submission (Continued)

A Required Proposal Elements (Continued)

*--The following illustrates how shapefiles for a hypothetical BCAP project area named Energy Crop All (eca) that are in a Geographic Coordinate System (gcs) would be named:

- bcap_eca_a_gcs.dbf
- bcap_eca_a_gcs.prj
- bcap_eca_a_gcs.sbn
- bcap_eca_a_gcs.sbx
- bcap_eca_a_gcs.shp
- bcap_eca_a_gcs.shp.xml
- bcap_eca_a_gcs.shx.

Note: Submit all shapefiles in the Geographic Coordinate System projection.

Shapefile creators should retain multiple polygons and identifying attributes if the file created is based on a feature set such as counties or watershed boundaries. Do **not** merge separate polygon features into 1 large polygon.

The following attributes should be included within the polygon shapefile provided.

Name	Type	Length	Data Example
FID	Object Id	Default	
Shape	Polygon	Default	
Type	Text	25	BCAP
Name	Text	255	Energy Crop All
Code	Text	10	Energy Crop All

The project sponsor shall zip the files and submit the files with the project area proposal.

The zipped file shall include the State name where the majority of the project area is located and the BCAP project area name.

Notes: The shapefile will outline the geographic area eligible for enrollment.

See paragraph 254 for types of land within a project area that are eligible and ineligible to be offered for enrollment in a BCAP contract.

If BCF is **not** operational at the time the project area proposal is submitted, an attachment with evidence that BCF has sufficient equity available to operate is also required.--*

252 Project Proposal Review Step-by-Step Process

A Project Proposal Review

The following provides the work flow process for reviewing project proposals.

Step	Action
1	<p>State Offices must:</p> <ul style="list-style-type: none"> • publicize project opportunities • provide outreach by making available material to potential project sponsors, County Offices, and other partners. <p>Note: See subparagraph 30 B.</p>
2	<p>Project sponsor shall:</p> <ul style="list-style-type: none"> • access the BCAP web site located at www.fsa.usda.gov/BCAP for program information • prepare and submit all required project proposals and documents, as specified in paragraph 250, to the State Office BCAP Program Specialist for review •*--submit all required documents and attachments for project proposals listed in this paragraph and paragraph 250 to the State Office by providing the following: <ul style="list-style-type: none"> • hard copies of all documents • electronically on CD or thumb drive.--* <p>Notes: Proposal submissions:</p> <ul style="list-style-type: none"> • must include all information required by paragraph 250 • are to be sent to the State Office for review by the State Office and State BCAP Review Team and, if appropriate, recommended to the National Office. <p>Incomplete proposals will be returned to the project sponsor.</p>

252 Project Proposal Review Step-by-Step Process (Continued)

A Project Proposal Review (Continued)

Step	Action
3	<p>The State Office must:</p> <ul style="list-style-type: none"> • as soon as possible, review project proposals for accuracy and completeness according to the submission requirements in this paragraph • through the BCAP Review Team, review BCAP-22 and make initial determination about appropriate level of NEPA review according to 1-EQ <p>Note: Project sponsors are responsible for ensuring completion of appropriate NEPA requirements.</p> <ul style="list-style-type: none"> • convene the State BCAP Review Team to review project proposals according to the requirements of subparagraph 251 A and submit 1 of the following recommendations to SED: <ul style="list-style-type: none"> • reject proposal because of noted deficiencies, including a detailed explanation of questioned items and an opportunity to submit additional information <p>Note: Questioned items apply when information submitted is insufficient to meet the standards required by step 2.</p> <ul style="list-style-type: none"> • reject proposal based on project eligibility criteria • accept proposal conditionally subject to National level review.

--Section 2 Duration of BCAP-24's*271 BCAP-24 Duration****A Length and Type of BCAP-24's**

[7 CFR 1450.205] Contracts will be for a term of up to:

- 5 years for annual and nonwoody perennial crops; and
- 15 years for woody perennial crops.

B Duration Variations

The duration of BCAP-24 may vary for each BCAP-24. The BCAP-24 period will **not** exceed:

- 5 years for annual and nonwoody perennial crops
- 15 years for woody perennial crops.

Notes: The establishment time period may vary because of types of crop, agronomic conditions (for example, establishment timeframe, winter hardiness), and other factors.

See paragraph 272 for examples of BCAP-24's with different durations.

272 BCAP-24 Effective Dates**A Effective Date of BCAP-24**

The effective date of BCAP-24 is the first day of the month following the month COC approves BCAP-24, unless the producer elects to defer the effective date of BCAP-24. Participants on BCAP-24 may elect to defer BCAP-24 for up to 6 months.

Deferments of effective date greater than 6 months are considered invalid and will **not** be acted on or approved. See subparagraphs C and D for examples.

An effective date shall be entered in BCAP-24, item 6A.--*

272 BCAP-24 Effective Dates (Continued)

A Effective Date of BCAP-24 (Continued)

Because a producer may defer BCAP-24 effective date up to 6 months, all nonbiomass crops **must** be removed from the accepted acreage **before** the effective date of BCAP-24.

The effective date of BCAP-24 is BCAP-24's anniversary date, as displayed in item 6.

B Expiration Date

Expiration date of BCAP-24 is the last day of the month having the final anniversary date of BCAP-24. The expiration date is entered in BCAP-24, item 6B.

C Example of an Up to 5-Year BCAP-24

Producer submits BCAP-23 for land **not** currently enrolled in BCAP. BCAP-24 was approved by COC on February 22, 2011. The effective date is March 1, 2011, unless the producer chooses to defer the effective date. The producer may elect to defer the effective date for up to 6 months.

In this example, a 6-month deferment would result in an effective date of September 1, 2011.

The expiration date for this BCAP-24 is the last day of the month having the final anniversary date of BCAP-24. If the effective date is March 1, 2011, the expiration date of a 5-year duration BCAP-24 is February 29, 2016. If deferment to September 1, 2011, is ***--elected, the expiration date of BCAP-24 is August 30, 2016.--***

Notes: The first annual payment is “due” on the first anniversary date of the effective date.

Annual payments will be paid as soon as practicable after the effective date and anniversary date of BCAP-24.

At present, advance first year annual payments **cannot** be practicably issued.

398 Terminating BCAP-24's (Continued)**F Refunds and Liquidated Damages Not Required**

Refunds of BCAP-24 payments and payment of liquidated damages are not required of:

- operators, when the administrator or heirs of an owner's estate do not become successor-in-interest to BCAP-24
- the owner's estate, if the either the estate or the heirs to the estate choose not to succeed to BCAP-24
- heirs, if a deceased person has no estate and heirs choose not to succeed the deceased heir
- anyone who is not a signatory to BCAP-24
- participants with a share not greater than zero on BCAP-24
- participants, when both the following apply:
 - an operator's estate wants to succeed BCAP-24
 - the landowner is not interested in signing or chooses not to sign a revised BCAP-24 with the operator's estate
- participants, when BCAP-24 is being terminated to enroll acreage in a State conservation program, EWRP, WRP, or EWP Floodplain Easement
- participants, when BCAP-24 was approved based on an erroneous ownership or operatorship determination provided that the erroneous determination was not the result of misrepresentation, scheme, or device by any of the participants
- participants, when BCAP-24 was approved based on an erroneous land eligibility decision according to paragraph 254
- participants, when there is a failure to establish or maintain cover and the failure is not the result of error on the part of the participant
- participants, when BCAP-24 is being terminated under early termination provisions.

***--Note:** Annual crops may allow for no penalty terminations after 2 growing seasons. See the Project Area Handbook Exhibit for crop-specific exceptions.--*

--398 Terminating BCAP-24's (Continued)*G BCAP-24 Terminated Because of Foreclosure**

BCAP participants will not be required to refund payments or pay liquidated damages when BCAP-24 is terminated because of loss of control over land because of foreclosure.

Note: Documentation must be filed showing that foreclosure occurred.

If the participant regains control of foreclosed land, BCAP-24 will be in effect on the date of foreclosure.

H Land Acquired Under Eminent Domain

BCAP land acquired under threat of condemnation or by eminent domain for public use is considered an involuntary loss of land by the participant.

In cases where condemnation or eminent domain acquisition can be documented, COC will:

- terminate the BCAP acres acquired through condemnation or eminent domain

Exception: BCAP acreage may be continued under BCAP-24 if there is minimal impact on the affected acreage and the vegetative cover is maintained.

- waive the refund of BCAP payments
- not assess liquidated damages
- in the case of annual payments, prorate to eligible participants annual payments earned for the period of time that elapsed before BCAP acreage was acquired by eminent domain.--*

--403 Waiving Assessed Liquidated Damages (Continued)*A Request for Waiver (Continued)**

STC has authority to approve requests for full waiver of liquidated damages. On appeal, STC also has authority to reverse or modify COC decision to only waive 50 percent of liquidated damages.

Note: STC will follow 1-APP for decisions disapproving waivers of liquidated damages or in reversing, on appeal, COC decisions to grant 50 percent waivers of liquidated damages.

B Submitting Waiver Requests

If COC determines a 100 percent waiver of liquidated damages is appropriate according to subparagraph A, COC will include the following in its recommendation to STC:

- copy of determination or documentation showing that liquidated damages have been assessed and narrative explaining the circumstances leading up to liquidated damage assessment
- copy of participant's written requests for waiver of liquidated damages, if the request was made by the participant
- COC findings
- specific COC recommendation and basis for that recommendation
- copies of all program documents and County Office records related to the terminated BCAP-24 crop acreage and assessment of liquidated damages.--*

***--404 Early BCAP-24 Termination**

A Policy for Early BCAP-24 Termination Requests

[7 CFR 1450.205] Duration of contracts. (a) Contracts will be for a term of up to:

- (1) 5 years for annual and nonwoody perennial crops; and
- (2) 15 years for woody perennial crops.

(b) The establishment time period may vary due to: Type of crop, agronomic conditions (for example, establishment time frame, winter hardiness), and other factors.

B Participant Request Requirements

BCAP participants may request early termination of any part or all of the eligible enrolled acreage under BCAP-24, in writing, by:

- specifically identifying the enrolled BCAP acreage on which early termination is being sought
- stating whether a revised BCAP-23 and BCAP-24 will be sought for enrolled acreage that is not the subject of an early termination request
- acknowledging that final annual payments for terminated acres may be prorated based on the effective date of termination.

*--The participant **must** refund all or part of the payments made with respect to the contract plus interest, as determined by CCC, and must pay liquidated damages as provided for in the contract and this Part.--*